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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
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17 **Scott Johnson,**

18 Plaintiff,

19 v.

20 **Robert W. Grubb**, in individual and  
21 representative capacity as trustee of  
22 The 2004 Janet M. Grubb and  
23 Robert W. Grubb Revocable Trust;  
24 **Janet M. Grubb**, in individual and  
25 representative capacity as trustee of  
26 The 2004 Janet M. Grubb and Robert W. Grubb  
Revocable Trust; **Joe's Auto Svc Center, Inc.**, a  
California Corporation; and Does 1-10,

27 Defendants.

28  
1 Case No.

2 **Complaint For Damages And**  
3 **Injunctive Relief For Violations**  
4 **Of: American's With Disabilities**  
5 **Act; Unruh Civil Rights Act**

6 Plaintiff Scott Johnson complains of Robert W. Grubb, in individual and  
7 representative capacity as trustee of The 2004 Janet M. Grubb and Robert W.  
8 Grubb Revocable Trust; Janet M. Grubb, in individual and representative  
9 capacity as trustee of The 2004 Janet M. Grubb and Robert W. Grubb  
10 Revocable Trust; Joe's Auto Svc Center, Inc., a California Corporation; and  
11 Does 1-10 ("Defendants"), and alleges as follows:

1                   **PARTIES:**

2                   1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
3                   level C-5 quadriplegic. He cannot walk and also has significant manual  
4                   dexterity impairments. He uses a wheelchair for mobility and has a specially  
5                   equipped van.

6                   2. Defendants Robert W. Grubb and Janet M. Grubb, in individual and  
7                   representative capacity as trustee of The 2004 Janet M. Grubb and Robert W.  
8                   Grubb Revocable Trust, owned the real property located at or about 400 S.  
9                   Main Street, Milpitas, California, between May 2019 and October 2019.

10                  3. Defendants Robert W. Grubb and Janet M. Grubb, in individual and  
11                  representative capacity as trustee of The 2004 Janet M. Grubb and Robert W.  
12                  Grubb Revocable Trust, own the real property located at or about 400 S. Main  
13                  Street, Milpitas, California, currently.

14                  4. Defendant Joe's Auto Svc Center, Inc. owned Joe's Auto Service Center  
15                  located at or about 400 S. Main Street, Milpitas, California, between May  
16                  2019 and October 2019.

17                  5. Defendant Joe's Auto Svc Center, Inc. owns Joe's Auto Service Center  
18                  located at or about 400 S. Main Street, Milpitas, California, currently.

19                  6. Plaintiff does not know the true names of Defendants, their business  
20                  capacities, their ownership connection to the property and business, or their  
21                  relative responsibilities in causing the access violations herein complained of,  
22                  and alleges a joint venture and common enterprise by all such Defendants.  
23                  Plaintiff is informed and believes that each of the Defendants herein,  
24                  including Does 1 through 10, inclusive, is responsible in some capacity for the  
25                  events herein alleged, or is a necessary party for obtaining appropriate relief.  
26                  Plaintiff will seek leave to amend when the true names, capacities,  
27                  connections, and responsibilities of the Defendants and Does 1 through 10,  
28                  inclusive, are ascertained.

## **JURISDICTION & VENUE:**

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

## **FACTUAL ALLEGATIONS:**

10. Plaintiff went to Joe's Auto Service Center in May 2019, June 2019 and October 2019 with the intention to avail himself of its services, motivated in part to determine if the defendants comply with the disability access laws.

11. Joe's Auto Service Center is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible parking in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. On information and belief the defendants currently fail to provide accessible parking.

14. Additionally, on the dates of the plaintiff's visits, the defendants failed to provide accessible paths of travel leading to Joe's Auto Service Center entrance in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

15. On information and belief the defendants currently fail to provide

1 accessible paths of travel leading to Joe's Auto Service Center entrance.  
2

3       16. These barriers relate to and impact the plaintiff's disability. Plaintiff  
4 personally encountered these barriers.

5       17. By failing to provide accessible facilities, the defendants denied the  
6 plaintiff full and equal access.

7       18. The failure to provide accessible facilities created difficulty and  
8 discomfort for the Plaintiff.

9       19. The defendants have failed to maintain in working and useable  
10 conditions those features required to provide ready access to persons with  
11 disabilities.

12       20. The barriers identified above are easily removed without much  
13 difficulty or expense. They are the types of barriers identified by the  
14 Department of Justice as presumably readily achievable to remove and, in fact,  
15 these barriers are readily achievable to remove. Moreover, there are numerous  
16 alternative accommodations that could be made to provide a greater level of  
17 access if complete removal were not achievable.

18       21. Plaintiff will return to Joe's Auto Service Center to avail himself of its  
19 services and to determine compliance with the disability access laws once it is  
20 represented to him that Joe's Auto Service Center and its facilities are  
21 accessible. Plaintiff is currently deterred from doing so because of his  
22 knowledge of the existing barriers and his uncertainty about the existence of  
23 yet other barriers on the site. If the barriers are not removed, the plaintiff will  
24 face unlawful and discriminatory barriers again.

25       22. Given the obvious and blatant nature of the barriers and violations  
26 alleged herein, the plaintiff alleges, on information and belief, that there are  
27 other violations and barriers on the site that relate to his disability. Plaintiff will  
28 amend the complaint, to provide proper notice regarding the scope of this  
lawsuit, once he conducts a site inspection. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied. See  
 2 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 3 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 4 disability removed regardless of whether he personally encountered them).

5

6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
 7 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 23. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 10 again herein, the allegations contained in all prior paragraphs of this  
 11 complaint.

12 24. Under the ADA, it is an act of discrimination to fail to ensure that the  
 13 privileges, advantages, accommodations, facilities, goods and services of any  
 14 place of public accommodation is offered on a full and equal basis by anyone  
 15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 16 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,  
 18 or procedures, when such modifications are necessary to afford  
 19 goods, services, facilities, privileges, advantages, or  
 20 accommodations to individuals with disabilities, unless the  
 21 accommodation would work a fundamental alteration of those  
 22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is  
 24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 25 defined by reference to the ADA Standards.
- 26 c. A failure to make alterations in such a manner that, to the  
 27 maximum extent feasible, the altered portions of the facility are  
 28 readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs or to ensure that, to the  
2 maximum extent feasible, the path of travel to the altered area and  
3 the bathrooms, telephones, and drinking fountains serving the  
4 altered area, are readily accessible to and usable by individuals  
5 with disabilities. 42 U.S.C. § 12183(a)(2).

6 25. When a business provides parking for its customers, it must provide  
7 accessible parking.

8 26. Here, accessible parking has not been provided.

9 27. When a business provides paths of travel, it must provide accessible  
10 paths of travel.

11 28. Here, accessible paths of travel have not been provided.

12 29. The Safe Harbor provisions of the 2010 Standards are not applicable  
13 here because the conditions challenged in this lawsuit do not comply with the  
14 1991 Standards.

15 30. A public accommodation must maintain in operable working condition  
16 those features of its facilities and equipment that are required to be readily  
17 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

18 31. Here, the failure to ensure that the accessible facilities were available  
19 and ready to be used by the plaintiff is a violation of the law.

20

21 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
22 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
23 Code § 51-53.)**

24 32. Plaintiff repleads and incorporates by reference, as if fully set forth  
25 again herein, the allegations contained in all prior paragraphs of this  
26 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,  
27 that persons with disabilities are entitled to full and equal accommodations,  
28 advantages, facilities, privileges, or services in all business establishment of

1 every kind whatsoever within the jurisdiction of the State of California. Cal.  
2 Civ. Code § 51(b).

3 33. The Unruh Act provides that a violation of the ADA is a violation of the  
4 Unruh Act. Cal. Civ. Code, § 51(f).

5 34. Defendants' acts and omissions, as herein alleged, have violated the  
6 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
7 rights to full and equal use of the accommodations, advantages, facilities,  
8 privileges, or services offered.

9 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
10 discomfort or embarrassment for the plaintiff, the defendants are also each  
11 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
12 (c).)

13 36. Although the plaintiff was markedly frustrated by facing discriminatory  
14 barriers, even manifesting itself with minor and fleeting physical symptoms,  
15 the plaintiff does not value this very modest physical personal injury greater  
16 than the amount of the statutory damages.

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**PRAYER:**

19 Wherefore, Plaintiff prays that this Court award damages and provide  
20 relief as follows:

21 1. For injunctive relief, compelling Defendants to comply with the  
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
23 plaintiff is not invoking section 55 of the California Civil Code and is not  
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act, which provides for actual  
26 damages and a statutory minimum of \$4,000 for each offense.

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1           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3  
4 Dated: January 28, 2020

CENTER FOR DISABILITY ACCESS

5           By:   
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8           Amanda Seabock, Esq.  
9           Attorney for plaintiff

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